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officers," established qualification and training standards for reserve officers, and defined the role and authority of auxiliary officers.

In 1981 the legislature added section 7-32-235, MCA, to the statutory provisions on reserve and auxiliary officers. The new statute provided that search and rescue units are under the operational control and supervision of the county sheriff having jurisdiction. When the 1985 amendments discussed above were enacted, this provision became subsection (2) of section 7-32-235, MCA.

The 1981 legislation which expressly gave the county sheriff supervisory control over search and rescue operations (1981 Mont. Laws, ch. 42) contained an instruction stating that the new statute was intended to be codified as an integral part of Title 7, chapter 32, part 2, MCA, and that the provisions of Title 7, chapter 32, part 2, MCA, apply to the new statute. To conform the statutory list of duties of the sheriff, the legislation also amended section 7-32-2121, MCA, by adding subsection (11), which requires the sheriff to "take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service."

Section 7-32-201(1), MCA, defines "auxiliary officer" as "an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities." (Emphasis added.) Subsection (3) defines "law enforcement agency" as "a law enforcement service provided directly by a local government."

In view of the legislative history and express language of the involved statutes, I conclude that members of a county-recognized search and rescue unit are "auxiliary officers" and thereby subject to the applicable provisions of Title 7, chapter 32, part 2, MCA. Cf. State v. Lemmon, 41 St. Rptr. 2359, 692 P.2d 455 (1984) (member of sheriff's posse is an auxiliary officer). Search and rescue unit members are unsworn part-time volunteers who provide a law enforcement service when called out on a search by the sheriff. While such auxiliary officers are exempt from the qualification and training requirements which apply to reserve officers (see § 7-32-234, MCA), I further conclude that the full workers' compensation coverage required by section 7-32-203(2), MCA, should also extend to any training or testing exercises which are conducted on the orders and

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at the direction of the sheriff. See § 7-32-231, MCA. While engaged in training or testing operations under the sheriff's supervision, the auxiliary officers are providing "actual service for a law enforcement agency" and should be insured by the agency under its workers' compensation coverage. See § 7-32-203(2), MCA.

These conclusions make it unnecessary to address your second question.

THEREFORE, IT IS MY OPINION:

Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 98

CITIES AND TOWNS - Authority to overrule decision of city library board of trustees;
LIBRARIES - Authority of library board of trustees;
URBAN RENEWAL - Authority of city commission to overrule library board decision in order to promote redevelopment in urban renewal area;
MONTANA CODE ANNOTATED - Section 22-1-309(4);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 91 (1986).

HELD:

A city commission does not have the authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs.

18 July 1988

David Gliko
Great Falls City Attorney
P.O. Box 5021
Great Falls MT 59403-5021

Dear Mr. Gliko:

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You have requested my opinion on the following question:

May the city commission overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to service the library's parking needs?

In 1965 the Board of Trustees of the Great Falls City Library asked the city to issue general obligation bonds in order to finance the construction of a new library. The bond issue was placed on the ballot and approved by the Great Falls voters. The general obligation bonds were issued in the name of the city, and the new library was constructed. Some of the bond money was used to purchase a parking lot for the library. Title to the parking lot was conveyed by the sellers to the city. Since 1965 the library board has leased out parking spaces in the lot to the public and has received the income from the leases.

Recently a developer who is interested in refurbishing an apartment building adjacent to the library parking lot offered to purchase or lease the lot in order to meet the parking requirements of the city's urban renewal plan. After two public hearings the library board declined to sell or lease the parking lot to the developer. The city commission has asked whether it has the legal authority to override the library board's decision and transfer the property to the developer in an effort to promote redevelopment in the urban renewal area.

The powers and duties of the library board of trustees are set forth in section 22-1-309, MCA, which provides in part:

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

....

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer

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required by the library and to insure the real and personal property of the library[.]

The board acquired the parking lot by purchase and has owned and held it in the name of the city for the use and purposes of the library. Section 22-1-309(4), MCA, gives the board the express power to sell, exchange, or otherwise dispose of the parking lot whenever it is no longer required by the library.

I have found no similar statutory authority granting the city commission the right to override the library board's decision concerning disposition of real property which is owned and held by the board and used for library purposes. The fact the title to the parking lot is held in the name of the city merely shows compliance with section 22-1-309(4), MCA, and does not provide a basis for the city to transfer an interest in the property without the approval and request of the library board.

In 41 Op. Att'y Gen. No. 91 (1986) I considered whether a board of county commissioners could override a decision by the county library board of trustees concerning pay increases for library personnel. I noted in the opinion that library trustees are granted direct responsibility for administering the library in a manner largely independent of city or county control. The reasoning of that opinion applies as well to your question. Insofar as the library trustees have been given explicit authority under the Library Systems Act, their determinations may not be subjected to plenary review and possible modification by the city commission. I conclude that the city commission may not overrule the decision by the library board of trustees not to sell or lease the library's parking lot.

As in my previous opinion, I do not find the Montana Supreme Court's decision in Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507 (1976), to be authority for the proposition that the library trustees are subject to the control of the city commission in matters expressly given to the trustees by statute. While the Court referred to the library board as an "adjunct of the local government" for the purpose of determining which entity is to be viewed as the "public employer" of library personnel, the Court also acknowledged that the library board is given independent powers to manage and operate the library.

I do not address, nor do I intend in this opinion to limit in any way, the authority of the city under the

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Urban Renewal Law as set forth in Title 7, chapter 15, part 42, MCA. See, e.g., § 7-15-4259, MCA.

THEREFORE, IT IS MY OPINION:

A city commission does not have the authority to overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 99

CHILD CUSTODY AND SUPPORT - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;
LIMITATIONS ON ACTION - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;
REVENUE, DEPARTMENT OF - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;
STATUTES - Retroactivity;
MONTANA CODE ANNOTATED - Sections 1-2-109, 40-6-108;
MONTANA LAWS OF 1987 - Chapter 129.

HELD:

The change by the 1987 Montana Legislature in the statute of limitations for paternity actions initiated by a state agency did not revive actions barred under the previous statute of limitations.

19 July 1988

John D. LaFaver, Director
Department of Revenue
Room 455, Mitchell Building
Helena MT 59620

Dear Mr. LaFaver:

You have requested my opinion concerning a recent legislative change to the statute of limitations governing paternity actions. As amended in 1985,

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section 40-6-108, MCA, provided that a state agency must bring an action to establish paternity within two years of the child's application for services under Title IV-D of the Social Security Act. The effect of this statute was to bar any paternity claims made more than two years after the child's application for services. Prior to 1985 the statute of limitations for paternity actions was three years from the birth of the child.

The change enacted in 1987 by the Montana Legislature allows the state agency to bring an action "at any time" after the child has applied for such services. The prospective effect of the legislative change is clear, but your question relates to the effect of the legislation retroactively. You have posed the following question:

In enacting a new statute of limitations for paternity actions initiated by a state agency, did the Montana Legislature revive causes of action which were barred under the previous statute?

My answer is that there is no revival. The general proposition that an action, once barred, is not revived by subsequent legislation is settled:

Although there is some authority to the contrary ... the great preponderance of authority favors the view that one who has become released from a demand by the operation of the statute of limitations is protected against its revival by a change in the limitation law.

51 Am. Jur. 2d Limitation of Actions § 44 (1970) (footnotes omitted). In a case which was factually similar to your question, the Colorado Supreme Court has held that a paternity action barred by a previous statute of limitations could not be revived by a change in the statute:

When the bar of the statute of limitations has once attached, the Legislature cannot revive the action. [Citation omitted.]

Jefferson County Department of Social Services v. D. A. G., 607 P.2d 1004, 1006 (Colo. 1980).

This conclusion is buttressed by the general disfavor toward retroactive application of legislation. Section 1-2-109, MCA, provides: